Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Petition for Expedited Forbearance Under 47 U.S.C. § 160(c) for Imposition of Additional Unbundling Obligations	WC Docket No. 05-261

OPPOSITION OF VERIZON TO PETITION FOR EXPEDITED FORBEARANCE

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I. SUMMARY

This is not a petition for forbearance. Instead, Fones4All requests that the Commission impose new unbundling obligations — specifically, to require incumbents, nationwide, to provide unbundled access to mass-market local switching, and therefore the UNE Platform, whenever any CLEC elects to provide service to a Lifeline customer. Yet Fones4All has raised these same claims before, and the Commission rejected them in the *Triennial Review Remand Order*,[2] when it refused to require incumbents to provide unbundled mass-market switching in any market, no matter how defined. Because Congress intended for forbearance to *remove* regulation in favor of market competition — and because Fones4All seeks to impose regulation, not to enable market competition — the petition should be denied.

In addition, the petition rests upon a fundamental legal error. Fones4All appears to believe that forbearance would give rise to some pre-existing, statutory unbundling obligation. The Supreme Court and the D.C. Circuit have made clear, however, that there is no such

[1] The Verizon telephone companies ("Verizon") are identified in Appendix A to these comments.

[2] Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533 (2005) ("*Triennial Review Remand Order*" or "*TRRO*"), *petitions for review pending*, *Covad Communications Co. v. FCC*, Nos. 05-1095 *et al.* (D.C. Cir.).

obligation under the 1996 Act. Instead, unbundling obligations exist only by order of the Commission, and can be imposed only after the Commission finds impairment and concludes that unbundling is warranted even in light of the costs it imposes. In the *TRRO*, the Commission — considering, among others, the same arguments Fones4All presents here — found that competitors are *not* impaired without access to unbundled mass-market circuit switching and that, moreover, even if there were some impairment, the Commission would exercise its "at a minimum" authority and not require unbundling in light of investment disincentives that unbundled switching and the UNE Platform created. Therefore, even apart from the fact that the Commission cannot forbear from a decision *not* to impose a regulatory obligation, the relief sought by Fones4All would not result in the affirmative findings necessary to give rise to any unbundling obligation. For that reason as well, the petition should be denied.

Finally, what Fones4All actually seeks here is reconsideration, in part, of the Commission's twin determination, described above, not to require unbundling of mass-market circuit switching in any market in the country. *See TRRO* ¶¶ 204, 218. But Fones4All failed to file for reconsideration within the time specified in the Commission's rules, and cannot cure that failure by re-captioning its petition for reconsideration as a petition for forbearance.

In any event, even if considered on the merits, Fones4All's claims fail. Fones4All has barely addressed, much less responded to, the Commission's reasons for its decision in the *TRRO* not to require the unbundling of mass-market local switching. In particular, Fones4All ignores the Commission's express rejection of claims, including Fones4All's claims, that "competitive LECs are impaired in specific circumstances due to unique characteristics of the particular customer[s] . . . they seek to serve." *TRRO* ¶ 222. As the Commission recognized, claims such as Fones4All's are "at odds with [the] impairment standard," because that standard considers

both a reasonably efficient competitor and all revenue opportunities available to such a carrier. *Id.*

In rehashing its claims here, Fones4All offers no evidence demonstrating that competitors are impaired in any properly defined market. Nor does it mention, let alone challenge, the Commission's determination that, "even if some limited impairment might exist in some markets," the Commission still would not require unbundling "based on the investment disincentives that unbundled local circuit switching, and particularly UNE-P, creates." *Id.* ¶ 218. In fact, Fones4All's real complaint is with the rules governing the payments that it receives when it serves Lifeline-eligible customers, which it claims undermine its ability to compete. But as the D.C. Circuit has held and the Commission has recognized, the Commission cannot respond to alleged problems in other areas of the Commission's regulatory regime (such as Lifeline compensation rules) by ordering unbundling, instead it must address any such issues by modifying those rules.

II. THE PETITION SHOULD BE DENIED BECAUSE THE RELIEF REQUESTED CANNOT BE OBTAINED THROUGH FORBEARANCE

A. The Petition Should Be Denied Because Forbearance Necessarily Results in the Elimination of Regulation

The Commission's forbearance authority is manifestly *de*regulatory. Section 160 embodies that fact insofar as it *requires* the Commission to "forbear from applying any regulation or any provision" of the Act when the statutory criteria are satisfied. 47 U.S.C. § 160(a). As the Commission has recognized, the fundamental question in considering a petition for forbearance is therefore whether "market conditions" and "market forces" are sufficient to ensure that rates will be just and reasonable and that consumers will be protected in the *absence*

of regulation, such that forbearance is in the public interest.[3] That understanding is confirmed by the text of § 160, because, as the Commission has held, "the word "forbear . . . means to desist from; cease."[4] Therefore, when the Commission forbears, it ceases to enforce a regulatory or statutory requirement, permitting carriers to compete free from the constraints imposed by regulation. Fones4All, by marked contrast, does not want the Commission to *cease* regulating. Nor does it want to compete in the market. Instead, it wants the Commission to reverse a decision made in the *TRRO not to regulate* and to impose (once again) unbundling obligations.

In a similar circumstance, the D.C. Circuit recognized that, when the Commission has refused to impose an unbundling obligation, there is nothing from which it may forebear. In *USTA II*,[5] CLECs challenged the Commission's decision not to require the unbundling of hybrid loops, claiming that it was an unlawful exercise of the Commission's forbearance authority. *See* 359 F.3d at 578-79. The D.C. Circuit rejected their arguments, finding that, when the Commission "withhold[s] unbundling orders" for a particular facility, there is no regulatory requirement that the Commission could cease applying, because forbearance "obviously comes into play only for requirements that exist" in the first place. *Id.* at 579-80.

For the foregoing reasons, the Commission should deny the petition out of hand.

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[3] Memorandum Opinion and Order and Notice of Proposed Rulemaking, *Personal Communication Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance*, 13 FCC Rcd 16857, ¶ 18 (1998); *see also* Memorandum Opinion and Order, *Petition of SBC Communications Inc. for Forbearance from the Application of Title II Common Carrier Regulation to IP Platform Services*, 20 FCC Rcd 9361, ¶ 9 (2005) ("*IP Forbearance Order*") (explaining that forbearance is a "means by which the Commission may remove existing requirements that have been rendered unnecessary by market developments").

[4] *IP Forbearance Order* ¶ 5 (internal quotation marks omitted).

[5] *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir.) ("*USTA II*"), *cert denied*, 125 S. Ct. 313, 316, 345 (2004).

B. The Petition Should Be Denied Because Forbearance Cannot Be Used To Create Unbundling Obligations

Fones4All (at 13) relies upon an equally erroneous interpretation of the law when it supposes that, if the Commission were to grant its petition, incumbents would necessarily be obligated to provide unbundled access to circuit switching to competitors seeking to serve Lifeline customers. That claim is contrary to binding Supreme Court and D.C. Circuit precedent.

The Supreme Court has made clear that § 251(c)(3) does not establish an "underlying duty to make all network elements available," to which the Commission could "create isolated exemptions" as a matter of "regulatory grace." *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 391-92 (1999). Instead, pursuant to the 1996 Act, the provision of UNEs is an exceptional requirement that applies under only statutorily defined circumstances. *See id.* at 390 (finding that, if Congress had intended to authorize "blanket" and "unrestricted" access to UNEs, then "it would not have included § 251(d)(2) in the statute at all"). The Act, therefore, requires that the Commission, *before* imposing an unbundling requirement, "determine on a rational basis *which* network elements must be made available," applying the standards that are prescribed by the Act. *Id.* at 391-92. Moreover, when the Commission has not made a finding of impairment and has not issued an unbundling order, incumbents have no unbundling obligation under § 251(c)(3).

Based upon the Supreme Court's instruction, the D.C. Circuit has held that Congress "made 'impairment' the touchstone" for any requirement that incumbents provide UNEs. *United States Telecom Ass'n v. FCC*, 290 F.3d 415, 425 (D.C. Cir. 2002) ("*USTA I*"), *cert. denied*, 538 U.S. 940 (2003); *see USTA II*, 359 F.3d at 579 (rejecting CLECs' claims that the Commission can "order unbundling even in the absence of an impairment finding if it finds concrete benefits to unbundling that cannot otherwise be achieved"). The Commission itself has acknowledged

that it cannot "impose [UNE] obligations first and conduct [the] 'impair' inquiry afterwards."[6] Indeed, the D.C. Circuit has vacated Commission decisions to impose UNE obligations everywhere because it could not determine exactly where competitors are *not* impaired, holding that the Act requires the Commission to determine where carriers *are* impaired and to order unbundling only in those areas, and then only after taking into account the "costs of unbundling (such as discouragement of investment in innovation)." *USTA II*, 359 F.3d at 571-72, 574.

Therefore, the Commission's determination in the *TRRO* that incumbents are not required to provide unbundled access to circuit switching at all — including when a CLEC seeks to serve a Lifeline customer — is not a limitation upon an otherwise existing obligation under the Act to unbundle. Instead, it is a determination that the statute does not require unbundling. Accordingly, even if the Commission were to grant the petition for forbearance, ILECs would have no duty to provide unbundled access to circuit switching or to the UNE Platform.

Finally, because Congress explicitly set forth in § 251(d)(2) the criteria that the Commission must satisfy before unbundling is required, a petition pursuant to § 160 could never give rise to unbundling obligations under § 251(c)(3). Instead, unbundling can be ordered only pursuant to the criteria established in § 251(c)(3) and § 251(d)(2). Therefore, Fones4All's attempt to demonstrate that it satisfies the criteria laid out in § 160 is beside the point.

Those basic errors provide an independent basis for denying the petition.[7]

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[6] Supplemental Order Clarification, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 9587, ¶ 16 (2000), *aff'd*, *Competitive Telecomms. Ass'n v. FCC*, 309 F.3d 8 (D.C. Cir. 2002).

[7] Fones4All seeks "emergency" relief, but there is plainly no emergency, given Fones4All's decision to file this petition months after the Commission's rules eliminating unbundled mass-market circuit switching took effect on March 11, 2005. *See, e.g.*, *McDaniel v. United States Dist. Court*, 127 F.3d 886, 889 (9th Cir. 1997) ("[u]nreasonable delay" weighs against entitlement to emergency relief).

III. FONES4ALL'S PETITION IS ACTUALLY AN UNTIMELY PETITION FOR RECONSIDERATION THAT, IN ANY EVENT, IS WITHOUT MERIT

A. Fones4All's Petition Would Be Untimely If Viewed As a Petition for Reconsideration

A petition for reconsideration of a Commission rulemaking must be filed within 30 days of the release of an order.[8] Although Fones4All has captioned its submission as a petition for forbearance, it is evident by the arguments it advances that Fones4All is attempting to convince the Commission to reconsider its decision in the *TRRO* not to impose unbundling obligations for mass-market circuit switching in those instances in which a CLEC seeks to serve Lifeline customers.[9] But Fones4All's petition was filed on July 1, 2005, more than 140 days after the Commission released the *TRRO*. Because the petition would have been untimely if captioned as a petition for reconsideration, the Commission cannot treat Fones4All's petition as if it were a petition for reconsideration. *See* Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of* 1996, 18 FCC Rcd 7615, ¶ 9 (2003) (dismissing petition for reconsideration that was captioned a "petition for rescission" because it was filed outside 30 day period and because the "statutory deadline for filing reconsideration petitions would be rendered meaningless if it could be circumvented by styling the pleading as a petition for rescission").[10]

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[8] *See* 47 U.S.C. § 405(a); 47 C.F.R. § 1.429(d); *see also Sioux Valley Rural TV, Inc. v. FCC*, 349 F.3d 667, 677 (D.C. Cir. 2003), *cert. denied*, 541 U.S. 989 (2004).

[9] *See*, *e.g.*, Petition at 2 (arguing that the Commission "ignored substantial evidence in [the *TRRO*] record that UNE-P availability is required" in order to allow CLECs to serve Lifeline customers) (footnote omitted); *id.* at 13 (asserting that it was "demonstrated in the *TRRO* docket" that "there is not competition in the [so-called] residential universal service eligible market").

[10] Fones4All, which is represented by experienced telecommunications counsel, offers no reason for its failure to file its request for reconsideration in a timely manner.

B. Even if the Petition Were Considered on the Merits, Fones4All Has Not Demonstrated That It Is Impaired Without Unbundled Access to Circuit Switching

1. In the *TRRO*, the Commission rejected competitors' claims — including Fones4All's claims, *see* Petition at 2 n.9 — that it should preserve the UNE-P, even for some groups of mass-market customers, by again requiring incumbents to unbundle local switching. The Commission made that determination based upon substantial record evidence that CLECs are not impaired without unbundled access to incumbent switches and that it is "feasible" for CLECs to compete without unbundled switching "throughout the nation." *TRRO* ¶ 204. Among other things, the Commission noted that competitors could deploy (and were deploying) "softswitch technology and packet switches," which "are less expensive than traditional circuit switches and are more scalable." *Id.* ¶ 206. The Commission also concluded that the record evidence demonstrated that the absence of impairment held true across geographic areas, and showed that CLECs did not need access to mass-market local switching in the early stages of entry into a market. *See id.* ¶¶ 205, 209.

In addition, the Commission found that, "regardless of any potential impairment that may still exist," it would exercise its "at a minimum" authority and refuse to order further unbundling because "the disincentives to investment posed by the availability of unbundled switching, in combination with unbundled loops and shared transport, justify a nationwide bar on such unbundling." *Id.* ¶ 204. Specifically, the Commission explained that "UNE-P has been a disincentive to competitive LECs' infrastructure investment" and that requiring unbundling would "seriously undermine infrastructure investment and hinder the development of genuine, facilities-based competition." *Id.* ¶ 218; *see id.* ¶¶ 219-220.

Finally, in the *TRRO*, the Commission recognized "the growing potential sources of intermodal competition," *id.* ¶ 215 n.584, and market events since the release of the *TRRO*

confirm the Commission's conclusion that elimination of the UNE Platform would result in increased competition for mass-market customers. Cable telephony is exploding, with subscribership up 52% in the second quarter of 2005 from the same period last year[11] and "[n]et adds at [Cablevision] and [Time Warner] continu[ing] to exceed expectations" — developments that analysts view as "an early signal that cable would be a greater threat to the RBOCs' franchise than [the UNE Platform] ever was."[12] Cable companies are expected to serve 10 million telephony customers by the end of 2006, and Comcast alone plans to offer telephony to all 40 million of its customers by that date.[13] Independent IP-based providers are thriving as well, with Vonage recently announcing that it now has more than 1 million customers.[14] Moreover, the *majority* of voice lines (more than 181 million) are now wireless. More than 10 million wireline lines have been displaced by wireless,[15] and wireless has displaced an estimated 36 percent of all local calls and 60 percent of all long distance calls in households with wireless phones.[16]

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[11] *See* John C. Hodulik & Aryeh B. Bourkoff, UBS, *Broadband Hit by Seasonality as VoIP Ramps* at 12 (Aug. 16, 2005).

[12] Qaisar Hasan & May Tang, Buckingham Research, *The Last Mile – Monitoring Quarterly Trends in Telecommunications, Video and Data* at 1 (Aug. 18, 2005).

[13] *See* Craig Moffett, *et al.*, Bernstein Research Call, *Cable and Telecom: VoIP Deployment and Share Gains Accelerating; Will Re-Shape Competitive Landscape in 2005*, at 8 (Dec. 7, 2004); Comcast, Presentation at the Banc of America Securities 35th Annual Investment Conference (Sept. 19, 2005).

[14] *See* Press Release, Vonage® Activates One Millionth Customer (Sept. 6, 2005).

[15] *See* Blake Bath, Lehman Brothers, *Final UNE-P Rules Positive for RBOCs*, at Figure 2 (Dec. 10, 2004).

[16] *See* FCC News Release, *FCC Releases Data on Local Telephone Competition* (July 8, 2005); Keith Mallinson, Yankee Group, *Wireless Substitution of Wireline Increases Choice and Competition in Voice Services* (July 27, 2005); Philip Marshall, *et al.*, The Yankee Group, *Divergent Approach to Fixed/Mobile Convergence*, at 7 (Nov. 2004).

2. Fones4All submits no new evidence in asking the Commission to reverse its determinations with regard to unbundled switching and the UNE Platform. Fones4All does not address the Commission's findings, discussed above, and acknowledges (at 2 n.9, 9) that its arguments that impairment exists were presented to and rejected by the Commission in the *TRRO*. The few arguments Fones4All makes here do not call into question the Commission's decision, which as noted above has been confirmed by the rise in competition from intermodal alternatives since the *TRRO*.

First, Fones4All makes clear (at 7-8) that its grievance is actually with the manner in which competitors are reimbursed from state and federal universal service funds. Whatever the merit of these claims,[17] however, the D.C. Circuit that the Commission must address any such issue directly, and cannot order unbundling where there exists a "narrower alternative" with "fewer disadvantages." *USTA II*, 359 F.3d at 570-71. Following that holding, the Commission likewise recognized in the *TRRO* that "neither the impairment inquiry nor the other aspects of the unbundling framework should be distorted to compensate for alleged failings in related but distinct areas of the Commission's regulatory regime." *TRRO* ¶ 23.

Second, to the extent that Fones4All claims that it is impaired without unbundled access to incumbents circuit switches everywhere it hopes to serve Lifeline customers, it provides no support for those claims. For example, Fones4All asserts (at 9) that its potential subscriber base is not concentrated geographically, and that 95% of its customers are in wire centers in which no other facilities-based CLEC offers service. But Fones4All provides no support for those claims,

[17] Fones4All's challenge (at 8) to the reimbursement rules rests upon the premise that competitors have different (and presumably *higher*) cost structures than incumbents, but the Commission found in the *TRRO* that competitors can, and are, deploying cheaper softswitches and packet switches. *See TRRO* ¶ 206.

which are contradicted by record evidence in the *TRRO* proceeding showing that Lifeline customers are concentrated in specific geographic areas.[18]

In any event, the increasing availability, as well as the declining costs, of services offered by intermodal competitors undermines Fones4All's claim that the UNE Platform is necessary for low income customers to obtain the benefits of competition. In particular, wireless replacement occurs across income categories, given both the declining cost of traditional, "buckets-of-minutes" plans and the introduction of new pay-as-you-go plans, which are designed, in part, to attract low-income consumers.[19] Wireless plans also typically offer numerous calling features and include long-distance minutes, neither of which is supported by Lifeline. In addition, increased competition among broadband providers has, in recent months, driven the price of broadband service below $15 per month.[20] That broadband service can be combined with VoIP service, which is also available at rates below $15 per month.[21] VoIP, therefore, is competitive with the lower-priced wireless "bucket" plans, and again provides lower income customers with numerous additional calling features and capabilities.

Third, Fones4All asserts that it cannot replicate the ubiquity of incumbents' networks in its attempt to serve low-income customers. But ubiquitous deployment has *never* been the

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[18] *See* Comments of Telscape Communications, Inc., WC Docket No. 04-313 & CC Docket No. 01-338, at 5 (filed Oct. 4, 2004) (claiming that "Telscape has succeeded by maintaining a geographically regional focus, thereby building sufficient subscriber concentration to justify its own switches and local network").

[19] Comments of the National Consumers League, CC Docket 96-45 & WC Docket 03-109, at 2 (filed Sept. 17, 2004) ("Prepaid wireless service is a good option for low-income consumers.").

[20] *See*, *e.g.*, US.2005Deals: dsl, http://us.2005deals.com/directory.php?cat=computing&sub=dsl.

[21] *See*, *e.g.*, Vonage – Basic 500 Plan, http://www.vonage.com/products_basic.php (providing 500 anytime minutes, anywhere in the United States or Canada, for $14.99 per month, plus numerous calling features).

standard for impairment. Indeed, the D.C. Circuit vacated a prior Commission unbundling order for finding impairment where "the element in question — though not literally ubiquitous — is significantly deployed on a competitive basis." *USTA I*, 290 F.3d at 422; *see TRRO* ¶ 27. Nor does impairment exist based on a particular competitor's business plan, which would permit CLECs to claim impairment simply by refusing to pursue available, lucrative opportunities. The Commission recognized as much in the *TRRO* and expressly "rejected proposals that it should evaluate a requesting carrier's impairment with reference to that carrier's particular business strategy." *TRRO* ¶ 25. As the Commission noted, such an approach "could reward those carriers that are less efficient or whose business plans simply call for greater reliance on UNEs." *Id.* (internal quotation marks omitted).

Fourth, Fones4All's claims are based on the erroneous presumption that Lifeline customers constitute a distinct market for the purpose of the impairment analysis. "Attributes of [consumers] do not identify markets." *Menasha Corp. v. News America Mktg. In-Store, Inc.*, 354 F.3d 661, 664-65 (7th Cir. 2004) (Easterbrook, J.). Indeed, the Commission rejected all claims that "competitive LECs are impaired in specific circumstances due to unique characteristics of the particular customer[s] . . . they seek to serve," explaining that such claims are "at odds with [the] impairment standard," which focuses on a reasonably efficient competitor and requires consideration of all available revenue opportunities. *TRRO* ¶ 222.

Finally, Fones4All asserts (at 10-12) that the Commission should require unbundling in response to what it claims is declining subscribership for basic telephone service. As an initial matter, as explained above, the Supreme Court and the D.C. Circuit have held, and the Commission has recognized, that unbundling cannot be ordered unless the Commission finds that there is impairment and further determines that the benefits of ordering unbundling are not

outweighed by its costs. Indeed, the D.C. Circuit has expressly rejected claims, no different from Fones4All's claims here, that the Commission may "order unbundling even in the absence of an impairment finding if it finds concrete benefits to unbundling that cannot otherwise be achieved." *USTA II*, 359 F.3d at 579-80.

In any event, the data on which Fones4All relies do not substantiate its claims of a crisis in telephone subscribership rates, much less one that is unique to Lifeline customers. First, the surveys on which Fones4All relies did not directly account for wireless phone usage until 2005 and, even then, it is not clear that the revised question provides more reliable results.[22] In any event, there is little reason to believe that telephone penetration is actually declining given the growth of wireless "lines" — now totaling more than 180 million[23] — and, as detailed above, new pay-as-you-go plans that are designed, in part, for low-income customers. Second, even taking the data at face value, the decline in subscribership rates occurs *across* economic categories,[24] which does not support Fones4All's claims that any trend is uniquely affecting Lifeline customers.

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[22] *See* Alexander Belinfante, Industry Analysis & Technology Division, Wireline Competition Bureau, FCC, *Telephone Subscribership in the United States (Data through March 2005)* 2 & n.2 (rel. May 2005) ("*Telephone Subscribership March 2005*"); Douglas S. Shapiro, Banc of America Securities, *Battle for the Bundle: Mapping the Battlefield, Our First Report from the Front*, Research Brief (June 14, 2005).

[23] *See* FCC News Release, *Federal Communications Commission Releases Data on Local Telephone Competition*, at 1 (July 8, 2005).

[24] For example, the data show virtually the same percentage point decline, between 2004 and March 2005, for households with income from $7,500-$9,999 and those with incomes above $75,000. *See Telephone Subscribership March 2005* at 31 (Table 4).

CONCLUSION

For the foregoing reasons, the Commission should deny Fones4All's petition.

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Respectfully submitted,

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APPENDIX A

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. They are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Southwest Incorporated d/b/a Verizon Southwest
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on the October 14, 2005, I caused a copy of the foregoing Opposition of Verizon to Petition for Forbearance to be served upon each of the parties on the service list below by first-class mail, postage prepaid.

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